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In the Supreme Court
OF THE
United States

October Term, 1957

No. 845

Weyerhaeuser Steamship Company,
a corporation,
Petitioner,

vs.

Harold Yanow,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONER'S REPLY BRIEF.

I.

RESPONDENT OVERLOOKS THE FACT THAT PETITIONER WAS THE PREVAILING PARTY IN THE TRIAL COURT AND THAT THE FIRST TIME IT BECAME NECESSARY FOR IT TO ATTACK THE JUDGMENT REVERSING THE JUDGMENT IN ITS FAVOR IN THE TRIAL COURT WAS WHEN THE COURT OF APPEALS REVERSED SAID JUDGMENT.

In its brief on the merits in the Court of Appeals Petitioner clearly asserted its contention, by quoting from decisions, that "Nevertheless, that opinion [Petterson v.

Alaska S. S. Co., 347 U. S. 396] does not go so far as to hold that unseaworthiness arises from every defect in a vessel or in its equipment and maintenance, whether consisting of a *transitory* substance or otherwise." [Appellee's Answering Brief, p. 10.]

The fact that the Court below did not specifically refer to the Cookingham line of decisions does not support a contention, which seems to be asserted by Respondent, that the decision of the Court below is not in conflict therewith.

When it *first* became apparent to Petitioner, upon reading the opinion of the Court below, that *it* was of the opinion that this Court, in *The Osceola,* had held that a shipowner or ship-operator was liable, *in personam,* irrespective of negligence, for all personal injury suffered by a seaman or longshoreman in consequence of a *transitory* condition consisting of a spot of grease on a deck which was otherwise absolutely sound and without the slightest actual or latent defect of design or construction, a petition for rehearing raising contentions to the contrary was duly served and filed. All of the substantial points raised in the Petition for a Writ of Certiorari are exposed in said petition for rehearing, but the Court of Appeals refused to consider or decide them. What more could Petitioner have done? There was no reason, necessity or opportunity to raise any points by way of specification of errors allegedly committed by the trial court for the simple reason that Petitioner had prevailed in the trial court and was in no position to attack the judgment in its favor, even if the trial judge had given instructions which were erroneous as to Petitioner.

II.

RESPONDENT'S GRATUITOUS AND ERRONEOUS ASSUMPTION THAT PETITIONER CONTENDS THAT THE DECISION IN THE OSCEOLA WAS AN UNCONSTITUTIONAL ASSUMPTION OF LEGISLATIVE POWER SHOULD BE IGNORED.

Petitioner's contentions in respect of *The Osceola* are clearly set forth in the Petition for Rehearing and also in the Petition for a Writ of Certiorari. Respondent is attempting, on page 6 of his Brief in Opposition, to lead this Court astray on this issue.

Dated, April 2, 1953.

Respectfully submitted,

LASHER B. GALLAGHER,

Counsel for Petitioner.